



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,481	01/30/2007	Osamu Mori	4600-0116PUS1	8293

2292 7590 07/09/2009
BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER

WILLIAMS, LELA S

ART UNIT	PAPER NUMBER
----------	--------------

4132

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

07/09/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No. 10/563,481	Applicant(s) MORI ET AL.	
	Examiner LELA S. WILLIAMS	Art Unit 4132	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☒ Claim(s) 1,2,4 and 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/13/2008, 1/29/2007, 4/4/2006, 1/5/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 4132

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed on 5 January 2006 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.
2. Furthermore, the foreign reference RU 2006-103804A was submitted but is not listed on any of the Information Disclosure Statements.

Specification

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Objections

4. Claims 1, 2, 4 and 5 are objected to because of the following informalities: Please correct “*linolic*” to “*linoleic*”. Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 4132

6. Claims 1-3, and 7-11 are rejected under 35 U.S.C. 102(b) as being anticipated Freeman et al. (EP 0304115) as further explained by *Fats and Oils Formulating and Processing for Application*, hereafter O'Brien.

Regarding claims 1, 2, and 10; Table 1 (page 5) prepares menhaden/corn oil blends in ratios of 10:90, 25:75, 50:50, and 75:25. Calculating using the 25:75 ratio, oleic acid (C18:1) is approx. 3.5 parts by weight, linoleic acid (C18:2) is approx. 7.3 parts by weight, and linolenic acid (C18:3) is approx 0.2 parts by weight (approx 0.5 parts by weight when calculating using the 10:90 ratio) per one part by weight of long chain highly unsaturated fatty acids (EPA/DHA). Menhaden oil composition is taken to comprise approx. 11.4% C18:1, 1.5% C18:2, 1.6% C18:3, and 24.6 % of EPA/DHA and corn oil composition is taken to comprise approx. 25.4% C18:1, 59.6% C18:2, and 1.2% C18:3, as shown by O'Brien.

Regarding claims 3 and 7, both EPA and DHA are compositions present in menhaden oil and are shown to comprise approx. 6% of the whole fatty acid in the 25:75 ratio. EPA and DHA are as n-3 fatty acids having 20 or more carbon atoms and 3 or more double bonds.

Regarding claim 8, the blend disclosed by Freeman et al. does not contain any added antioxidants.

Regarding claim 9, Freeman et al. anticipates adding antioxidants by teaching adding antioxidants "at the 0.1% level seems to be most effective" (page 2, line 29).

Regarding claim 10, the 25% menhaden oil blended with 75% corn oil blend shown in Table 1 (page 5) is inherently a liquid at 5°C since it contains all the distinctive properties presented in claim 1.

Art Unit: 4132

7. Claims 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by A.D Andrade et.

al. ω 3 Fatty Acids in Freshwater Fish from South Brazil.

8. Regarding claim 4, Table 1 shows a fat and oil composition obtained from Capra fish having a fatty acid composition with 29.0 parts by weight (derived from $41.80/1.44$) of oleic acid, 10.1 parts by weight ($14.55/1.44$) of linoleic acid, and 1.5 parts by weight ($2.16/1.44$) of linolenic acid per one part by weight of long-chain highly unsaturated fatty acid (DHA).

Regarding claim 5, Table 1 shows the oil compositions as explained above and furthermore shows that the linoleic acid amount can be 11.55 parts by weight, which falls within the range of about 12 to about 45 parts by weight, given the calculations of 14.55 ± 0.81 of 18:2 ω 6 and 1.44 ± 0.11 of 22:6 ω 3.

Regarding claim 6 with respect to claims 4 or 5, the long chain highly unsaturated fatty acid is show to be 1.44 ± 0.11 , in Table 1.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LELA S. WILLIAMS whose telephone number is (571)270-1126. The examiner can normally be reached on Monday to Thursday from 7:30am-5pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike LaVilla can be reached on 571-272-1539. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 4132

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LELA S. WILLIAMS
Examiner, Art Unit 4132
22 June 2009

/David L. Robertson/
Supervisory Patent Examiner
Art Unit 4123

/L. S. W. /